

Rodgers, Ronald (OPA)

From: Krickbaum, Marc L. (ODAG) [REDACTED]@usdoj.gov]

Sent: Wednesday, December 03, 2008 2:37 PM

To: Rodgers, Ronald (OPA)

Subject: Aaron

Ron,

I made two changes in bold, and leave it to you to change the paragraph discussing the robbery. I also added an apostrophe to "months" in describing the length of Chisholm's sentence in point 1. Please let me know if you don't like my changes. Thanks very much for your dedication to getting all the relevant information to the White House with a quick turnaround in this case.

Ken, the commutation case of Clarence Aaron is, I believe, the last of the cases that you requested a second look at. We solicited, and recently received, a slightly revised recommendation as to disposition in the case from the current United States Attorney for the Southern District of Alabama, Deborah Rhodes. As it largely dovetails with the comments in the final paragraph of the DAG's recommendation in the case from August 2004 (and I have attached a copy of that recommendation) and because of the shortage of time before you close the doors on these matters, I thought it best to convey the U.S. Attorney's thoughts and recommendations in a summary format for you.

To date, Aaron has served approximately 15 years in prison. The U.S. Attorney recommends that at some point Mr. Aaron's sentence be commuted to a term of 25 years. Her recommendation is based on the following:

(1) The trial court determined that Aaron was "an organizer or manager" of the criminal activity that involved five other coconspirators, and that he was personally responsible for a least nine kilograms of cocaine base and 15 kilograms of cocaine; this determination was upheld on appeal. Three things are notable in the sentencing process as ultimately affirmed on appeal: (a) Aaron, and not co-defendant Chisholm (who was sentenced to 24 years, 4 months' imprisonment), was held responsible for converting the cocaine to cocaine base; (b) Aaron did not contest his upward role enhancement found by the district court; and (c) nor did Aaron contest the district court conclusion that he perjured himself at trial.

(2) While Aaron has demonstrated remorse, rehabilitation in prison, and a desire to assist others in avoiding destructive decisions, such must be balanced against his repeated and public assertions in which he has grossly minimized his role in the conspiracy. He inaccurately told "Frontline" that he was "not directly" involved in drug trafficking and that he had merely "introduced the two parties" to narcotics transactions - which was directly contradicted by the evidence offered at trial. Indeed, the evidence at trial showed that Aaron personally ordered the nine kilograms of cocaine, arranged for the down payment of \$200,000 for the cocaine to be transported to Houston, and arranged for the transportation of the cocaine base to Mobile, Alabama. After he personally converted those nine kilograms of cocaine to base, Aaron personally transported a coconspirator around to various purchasers to sell the narcotics. The same thing is true regarding the 15 kilograms of cocaine - Aaron traveled to Texas to personally pay \$250,000 for the cocaine and once he received delivery of it at a hotel room of his choosing, arranged for an armed robbery of the recipient of the \$250,000 he had just provided to him. Not only does this dispel Aaron's dismissal of his involvement as minor, but it similarly dispels his characterization of his offenses as "non-violent."

(3) Aaron's complaint that he was unable to cooperate with law enforcement authorities after his trial in an attempt to achieve a lesser sentence because he knew no one about whom he could provide information is also not completely accurate. Mr. Aaron could not be used as a witness because he perjured himself in each of his two trials (the first ended in a mistrial).

We also reached out to the sentencing judge, the Honorable Charles R. Butler, Jr. While he chose not to comment when he was approached regarding the Aaron clemency request in 2004, he informed a member of my staff on December 2, 2008 that he had no objection to commuting the sentence presently.

In sum, the U.S. Attorney believes Aaron a poor candidate for "time served" release presently because he has minimized his involvement in the very serious offenses of which he was convicted; because his sentence was upheld on appeal; because he twice committed perjury; and because his co-conspirator Chisholm, who was convicted of the same offenses as Aaron but not found responsible for sentencing purposes for converting the nine kilograms of cocaine into cocaine base, was sentenced to 24 years and 4 months imprisonment. As noted previously, **the U.S. Attorney believes that 25 years is an appropriate sentence.**

As you know, in the final paragraph of the 2004 DAG recommendation, support for a commutation of Aaron's sentence at some point in the future was not foreclosed. I have shared this e-mail with ODAG before sending it to you and they believe, as does the U.S. Attorney, that Mr. Aaron's commutation request is about 10 years premature.

Hope this helps, Ken
Ron Rodgers

Marc Krickbaum
Counsel to the Deputy Attorney General
(202) 514-4680 (office)

[REDACTED]
[REDACTED]@usdoj.gov